

# **EXHIBIT A**

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Attorneys for The BNSF Railway Company

MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS & CLARK COUNTY

LOUIS M. MELE

Charging Party,

vs.

BNSF RAILWAY COMPANY, a Delaware  
corporation,

Respondent

Cause No. *BDV-2006-486*

Judge

PETITION FOR JUDICIAL REVIEW

COMES NOW The BNSF Railway Company (BNSF) and petitions the Court for  
review of the administrative order herein.

1. Statement of Facts for Jurisdiction and Venue

Respondent, The BNSF Railway Company (BNSF), is a Delaware corporation with its  
registered agent in Yellowstone County, Montana. The District Court has jurisdiction  
pursuant to Section 2-4-702 M.C.A., because BNSF hereby petitions for review of the  
Montana Human Rights Commission Order Affirming Final Agency Decision, dated June 5,  
2006. Venue is proper in Lewis & Clark County because the Human Rights Commission and  
the Department of Labor are located in Lewis & Clark County.

1           2.     **Standing**

2           BNSF is aggrieved because it has been unlawfully found to have discriminated against  
3 Louis Mele and has been unlawfully subjected to the Order Affirming Final Agency Decision  
4 of the Human Rights Commission in case No. 0051011229.  
5

6           3.     **Grounds for Review**

7           The grounds for review are as follows:

- 8           a.           Charging party Louis Mele filed a complaint of discrimination with the  
9 Montana Department of Labor and Industry, alleging that BNSF had  
10 discriminated against him in the area of employment because of a  
11 perceived disability (back injury) in violation of the Montana Human  
12 Rights Act, Title 49, Chapter 2 MCA, and the Americans with Disabilities  
13 Act of 1990.  
14  
15          b.           BNSF extended a conditional offer of employment to Charging Party for  
16 the position of mechanical laborer on the railroad. Based on medical  
17 information submitted by the applicant, BNSF determined that Charging  
18 Party was temporarily not qualified at the time for that position due to the  
19 recency of back surgery and determined that he posed an unacceptable  
20 safety risk at that time, and thus, was not qualified at the time he applied  
21 from the unique position of mechanical laborer. BNSF did not disqualify  
22 applicant from any other job.  
23  
24          c.           Hearing on the matter was held before the Hearing Examiner on August  
25 15 and 16, 2005.  
26  
27  
28

- 1 d. In a decision dated January 13, 2006, the Hearing Examiner determined  
2 that the railroad discriminated against Charging Party on the grounds that  
3 BNSF regarded Charging Party as disabled. The Hearing Examiner found  
4 BNSF liable for emotional distress damages, front pay, and ordered BNSF  
5 to undergo training in disability discrimination. The Hearing Examiner  
6 also ordered several alternatives for the employment of Charging Party.  
7 The Hearing Examiner's order was affirmed by the Human Rights  
8 Commission.  
9
- 10 e. The orders of the Department and the Commission are in violation of the  
11 Montana Human Rights Act, Title 49, Chapter 2 MCA, and the Americans  
12 with Disabilities Act of 1990, and in excess of the statutory authority of the  
13 agency and affected by error of law that is clearly erroneous in view of the  
14 reliable, probative, and substantial evidence on the whole record. M.C.A.  
15 2-4-704.  
16
- 17 f. Charging party failed to meet his burden of demonstrating that BNSF  
18 perceived him as disabled as protected under the MHRA or ADA and  
19 further could not demonstrate that BNSF regarded Charging Party as  
20 incapable of performing a broad range of jobs. Charging party failed to  
21 establish that he had a qualified disability as he had a temporary condition  
22 and was not regarded as having a disability. As such, the agency had no  
23 jurisdiction over this matter. The order is unsupported by the evidence,  
24 was clearly erroneous in view of the reliable, probative, and substantial  
25 evidence and is contrary to law.  
26  
27  
28

- 1           g.           The Hearing Examiner's findings that BNSF did not appropriately  
2                       determine that Mele was at an increased risk of harm based on an  
3                       individualized assessment was clearly erroneous in view of the reliable,  
4                       probative, and substantial evidence.
- 5           h.           Charging party presented no probative evidence supporting an award of  
6                       damages for front pay, benefits and emotional distress and the findings  
7                       were unsupported by the evidence and clearly erroneous in view of the  
8                       reliable, probative, and substantial evidence.
- 9           i.           The prospective relief ordered by the agency to include employment of  
10                      Charging Party and the permanent injunction is unlawful and exceeds the  
11                      authority of the agency and constitutes an abuse of discretion.
- 12           j.           The order by the Commission affirming the decision of the Hearing  
13                      Examiner is faulty and unlawful for the same reasons stated in  
14                      Subparagraphs a through i, supra.

15           4.        **Relief Requested**

16           Wherefore, The BNSF Railway Company respectfully requests a complete dismissal  
17           of the Charging Party's complaint, or in the alternative modification or dismissal of those  
18           portions of the order that are clearly erroneous, unsupported by evidence or in excess of the  
19           authority of the agency.

20           BNSF further requests any additional relief the court deems just.

21           DATED this 5<sup>th</sup> day of July 2006.

HEDGER MOYERS LLP

By:   
Michelle T. Friend  
Attorneys for The BNSF Railway Company

**CERTIFICATE OF SERVICE**

I, do hereby certify that I have served a true and correct copy of the foregoing  
**PETITION FOR REVIEW** upon individual(s) listed below by the following means:

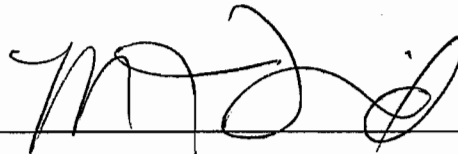
Brian Bramblett  
MELOY TRIEWELER  
P.O. Box 1241  
Helena, Montana 59624-1241

☒ U.S. Mail  
☒ Facsimile  
☐ Express Mail  
☐ Hand Deliver

State of Montana  
Dept. of Labor & Industry  
Employee Relations Div./Human Rights Bureau  
P.O. Box 1728  
Helena, Montana 59624-1728

☒ U.S. Mail  
☐ Facsimile  
☐ Express Mail  
☐ Hand Deliver

DATE: 07/05/06



Brian C. Bramblett  
MELOY TRIEWEILER  
80 South Warren  
P.O. Box 1241  
Helena, Montana 59624  
(406) 442-8670  
(406) 442-4953 fax

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

---

LOUIS MELE,	)	<b>Cause No. BDV 2006 486</b>
	)	
Charging Party,	)	<b>RESPONSE TO BNSF'S PETITION</b>
	)	<b>FOR JUDICIAL REVIEW</b>
v.	)	
	)	
BNSF RAILWAY COMPANY	)	
Respondent,	)	
	)	

---

Louis Mele responds to BNSF's Petition for Judicial Review as follows:

- 1) Mele denies that BNSF is the "Respondent" in this matter and further states that BNSF is the "Petitioner" and appellant in this Petition for Judicial Review. Mele admits the remaining allegations set forth in paragraph 1 of BNSF's Petition.
- 2) Mele denies the allegations set forth in paragraph 2 of BNSF's Petition.
- 3) In response to paragraph 3 – a of BNSF's Petition For Review, Mele admits he filed a Complaint with the Montana Department of Labor and Industry alleging that BNSF



discriminated against him in the area of employment on the basis of perceived disability in violation of §49-2-303, MCA, and the Americans With Disabilities Act of 1990.

4) In response to paragraph 3-b of BNSF's Petition for Review, Mele admits that BNSF extended to him a conditional offer of employment for the position of mechanical laborer with the railroad. Mele denies the remainder of paragraph 3-b of BNSF's Petition For Review.

5) Mele admits the allegations set forth in paragraph 3- c of BNSF's Petition For Review.

6) Mele admits the allegations set forth in paragraph 3-d of BNSF's Petition For Review.

7) Mele denies the allegations set forth in paragraph 3-e through 3-j of BNSF's Petition For Review.

8) Mele denies that BNSF is entitled to the relief requested in Paragraph 4 of BNSF's Petition for Review.

#### **ADDITIONAL FACTS**

9) On July 5, 2006, Mele filed a Petition for Attorney Fees and Petition for Review of Final Agency decision in this matter in Montana's First Judicial District Court, Cause Number CDV 2006-487. The parties in that Petition for Review are Louis Mele, BNSF Railway Company, the Montana Department of Labor and Industry (DOLI), the Montana Human Rights Commission (MHRC).

10) Mele's Petition requests that the District Court modify the Final Agency Decision to include future damages until Mele reaches the age of retirement at 65, requests that the



District Court otherwise affirm the final agency decision, and that the District Court award Mele his attorney fees and costs as the prevailing party.

**AFFIRMATIVE DEFENSES**

11) BNSF's Petition for Review is based on arguments not raised at the contested case hearing before the DOLI in this matter and, therefore, may not be raised for the first time on appeal before this Court.


12) BNSF failed to join the DOLI and the MHRC, both of whom are necessary parties to its Petition for Judicial Review. The DOLI and MHRC are necessary parties to BNSF's allegations that the DOLI and MHRC respectively acted unlawfully and in excess of statutory authority. The DOLI and MHRC are the true parties in interest to the prospective relief ordered pursuant to § 49-2-506, MCA, from which BNSF seeks relief. The relief requested by BNSF in its Petition for Review may not be granted in the absence of the DOLI and MHRC.

**WHEREFORE**, the Mele prays for relief as follows:

- 1) This Court deny or dismiss BNSF's Petition for Judicial Review;
- 2) This Court enter an Order awarding the damages set forth by the Department of Labor and Industry and Human Rights Commission.
- 3) This Court award such other and further relief as the Court deems appropriate.
- 4) Award the costs and attorney fees incurred by Mele responding to BNSF's Petition For Review; and,
- 5) Award any other damages or additional relief the Court deems just.

DATED this 25<sup>th</sup> day of July, 2006.

MELOY TRIEWELER

By:   
Brian C. Bramblett


**CERTIFICATE OF MAILING**

This is to certify that on the 25<sup>th</sup> day of July, 2006, a true and exact copy of the foregoing document was served on the Respondent by mailing a copy, postage pre-paid to:

Michelle Friend  
Attorney at Law  
1555 Campus Way, Suite 201  
Billings, MT 59102

Dept. of Labor & Industry  
1327 Lockey  
Helena, MT 59620

Dept. of Labor & Industry  
Human Rights Commission  
1625 Eleventh Avenue  
Helena, MT 59601

  
Brian C. Bramblett

MARIEKE BECK  
Special Assistant Attorney General  
Department of Labor and Industry  
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(406) 444-4493

Attorney for the Montana Human Rights Commission

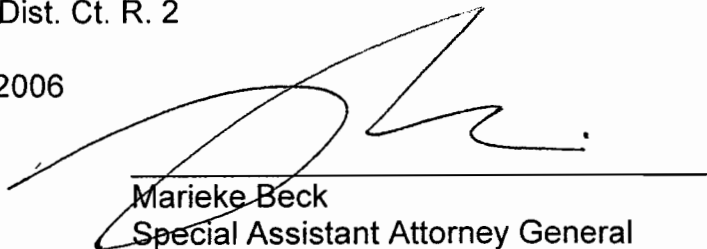
MONTANA FIRST JUDICIAL DISTRICT  
LEWIS AND CLARKE COUNTY

BURLINGTON NORTHERN and SANTA FE	)	Case No. BDV-2004-968
RAILWAY COMPANY,	)	Hon. Judge Sherlock
	)	
Petitioner,	)	
-vs-	)	<b>MOTION TO INTERVENE</b>
	)	
LOUIS MELE,	)	
	)	
Respondent.	)	
	)	

---

COMES NOW, the Department of Labor and Industry's Montana Human Rights Commission (Department) and respectfully moves this Court to allow the Department to intervene in this action pursuant to Rule 24(b)(2) of the Montana Rules of Civil Procedure. The Department's proposed order and brief in support of this motion will follow within five (5) days. Mont. Unif. Dist. Ct. R. 2

DATED this 28<sup>th</sup> day of July 2006


  
\_\_\_\_\_  
Marieke Beck  
Special Assistant Attorney General

### CERTIFICATE OF MAILING

This is to certify that on the 28<sup>th</sup> day of July, a true and exact copy of the foregoing document was mailed by the Department of Labor and Industry's Montana Human Rights Commission, postage pre-paid to the following:

Michelle Friend  
Jeff Hedger  
1555 Campus Way, Suite 201  
Billings, MT 59102

Brian C. Bramblett  
MELOY TRIEWEILER  
80 South Warren  
P.O. Box 1241  
Helena, MT 59624

  
\_\_\_\_\_  
Marieke Beck

MARIEKE BECK  
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(406) 444-4493

Attorney for the Montana Human Rights Commission (Department)

MONTANA FIRST JUDICIAL DISTRICT  
LEWIS AND CLARKE COUNTY

BURLINGTON NORTHERN and SANTA FE	)	Case No. BDV-2004-968
RAILWAY COMPANY,	)	Hon. Judge Sherlock
	)	
Petitioner,	)	
-vs-	)	<b>BRIEF IN SUPPORT OF</b>
	)	<b>MOTION TO INTERVENE</b>
LOUIS MELE,	)	
	)	
Respondent.	)	
	)	

---

On July 28, 2006, the Department of Labor and Industry's Montana Human Rights Commission (Department) submitted a Motion to Intervene in the above-entitled matter. This brief and the attached proposed order follow in support.

**BRIEF IN SUPPORT**

Louis Mele (Mele) filed a complaint of discrimination against Burlington Northern and Santa Fe Railway Company (Petitioner), on September 17, 2004 alleging discrimination based on perceived disability. A contested case hearing was held on August 15-16, 2005. On January 13, 2006, the Hearings Examiner issued a Final

Agency Decision. See Mele v. BNSF Railway Co., Case No. 2186-2005 (attached).

Both Mele and the petitioner appealed the decision to the Montana Human Rights Commission (Commission). The Commission considered the matter on May 8, 2006 and issued an order affirming the Hearings Examiner's Final Agency Decision on June 5, 2006. See Mele v. Burlington Northern Santa Fe Railroad, Case No. 0051011229.

The petitioner, BNSF, filed a timely petition for judicial review of the Department's Final Agency Decision in the First Judicial District. The Department of Labor and Industry was not a named party. Mele has filed an answer. This Court has not issued a briefing schedule.

### ARGUMENT

This petition involves a Final Agency Decision issued by the Department of Labor and Industry's Hearings Bureau and affirmed by the Human Rights Commission. By rule, when a party to an action states a claim based upon an order issued by a state agency, the agency, upon timely application, may be permitted to intervene in the action. Mont. R. Civ. P. Rule 24(b)(2). Here, the agency (referred to in this brief as the Department) submits this timely application in order to protect the affirmative relief set forth in its Final Agency Decision.

As background, in cases where the Department determines that a party has engaged in the alleged discriminatory conduct, the Department is **required** to order affirmative relief. See Mont. Code Ann. § 49-2-506(1). Additionally, the Department may prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found; require measures to correct the discriminatory practice;

and require a report on the manner of compliance. Id. In sum, the Department has a legislative mandate to identify and then correct unlawful discriminatory practices in the State of Montana.

In this case, the Department's Final Agency Decision placed a permanent injunction on the petitioner enjoining BNSF from withdrawing conditional offers of employment to qualified applicants based solely or primarily upon an occupational medical evaluation or statistical risk. See Attachment: Excerpt from Final Agency Decision, VI. Order at 28, ¶ 3. Additionally, the petitioner has been ordered to submit (within 60 days) proposed policies and a means of publishing said policies that comport with the injunction. Id. at 28-29, ¶ 4.

Of course, the affirmative relief ordered by the Department differs from damages awarded to Mele. The affirmative relief in the Department's order belongs to everybody that may come into contact with the petitioner, BNSF, and furthermore, it works to fulfill the Department's legislative mandate to identify and correct discriminatory practices. See *a/so* Mont. Code Ann. § 1-3-204.

Accordingly, the Department asserts it has a vested interest in protecting and ultimately enforcing the terms of its Final Agency Decision. Since the Department has a vested interest and since this Court has not issued a briefing schedule, the Department respectfully requests that this Court grant the Department's Motion to Intervene and allow the Department to participate in the briefing for this petition for

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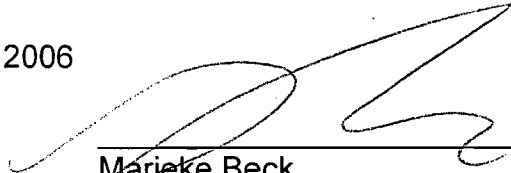
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judicial review.

DATED this 2<sup>nd</sup> day of August 2006


  
\_\_\_\_\_  
Marieke Beck  
Special Assistant Attorney General

### CERTIFICATE OF MAILING

This is to certify that on the 2<sup>nd</sup> day of August, a true and exact copy of the foregoing document was mailed by the Department of Labor and Industry's Montana Human Rights Commission, postage pre-paid to the following:

Michelle Friend  
Jeff Hedger  
1555 Campus Way, Suite 201  
Billings, MT 59102

Brian C. Bramblett  
MELOY TRIEWEILER  
80 South Warren  
P.O. Box 1241  
Helena, MT 59624

  
\_\_\_\_\_  
Marieke Beck

Attachment

HR No. 8901003828. In addition, Mele's repeated reapplications with BNSF and the actual financial losses he suffered (unlike the plaintiffs in *Johnson*) adequately establish greater emotional distress. The evidence of his emotional distress is sufficient to merit an award of \$7,500.00.

Upon a finding of illegal discrimination, the law requires affirmative relief that enjoins any further discriminatory acts and may further prescribe any appropriate conditions on the respondent's future conduct relevant to the type of discrimination found. It is proper and reasonable to enjoin BNSF from similar conduct in the future, and require it to adopt a policy, for Montana hiring decisions, to document future treatment of similar persons. Mont. Code Ann. § 49-2-506(1)(a) and (b).

## V. CONCLUSIONS OF LAW

1. The Department has jurisdiction. Mont. Code Ann. § 49-2-509(7).
2. BNSF regarded Mele as having a physical impairment that substantially limited the major life activity of working, when it withdrew its conditional offer to him of employment as a mechanical laborer on April 29, 2004, because of Mele's back injury, surgery and perceived limitations. Mont. Code Ann. § 49-2-101(19).
3. BNSF illegally discriminated against Mele because of disability when it made a disability-based distinction that was not reasonably based upon the essential tasks of the job at issue in withdrawing its conditional job offer to Mele for the reasons stated in Conclusion 2. Mont. Code Ann. § 49-2-303(1)(a).
4. The department should require the reasonable measures detailed in the findings and opinion to rectify the harm, pecuniary and otherwise, Mele suffered. Mont. Code Ann. § 49-2-506(1)(b).
5. The department must order BNSF to refrain from engaging in the discriminatory conduct and should prescribe conditions on BNSF's future conduct relevant to the type of discriminatory practice found, require the reasonable measures detailed in the findings and opinion to correct the discriminatory practice. Mont. Code Ann. § 49-2-506(1)(a) and (b).

## VI. ORDER

1. The department grants judgment in favor of charging party, Louis Mele, and against respondent, BNSF Railway Company, on Mele's charges of illegal disability discrimination against him as alleged in his complaint.

2. BNSF must

(a) immediately pay Mele the sum of \$29,511.72, making the appropriate employer contributions to SSI on his behalf for the back pay in this award (\$20,502.11) and

(b) upon satisfaction of the remaining conditions for his employment (the tests and screening performed after his original conditional offer of employment), hire Mele as soon as practicable in the position for which it extended the conditional offer of employment, paying him front pay of

(i) that proportion of \$20,000.00 represented by the number of days his date of hire is after this decision to 1 calendar year (number of days his date of hire is after this decision divided by 365 times \$20,000.00), making the appropriate employer contributions to SSI on his behalf for the front pay, if his date of hire is within 1 calendar year after this decision, due on his date of hire, OR

(ii) on each anniversary date of this decision before he is hired, up through the 4<sup>th</sup> anniversary date, \$20,000.00 and, should BNSF hire Mele before the 4<sup>th</sup> anniversary date of this decision, proportionate front pay due on the date of hire, in accord with subparagraph (i) above, based on the number of days from the last anniversary date of this decision before his hire to the date of his hire, instead of the number of days his date of hire is after this decision, to 1 calendar year, due on his date of hire, making the appropriate employer contributions to SSI on his behalf for all front pay, as paid.

3. The department permanently enjoins BNSF against withdrawing conditional offers of employment made to qualified applicants who, following back surgery and prior to the application for employment with BNSF that led to the conditional offers, were assigned either no limitations or limitations upon their work activities by each applicant's surgeons and treating or evaluating physicians that were consistent with the essential tasks of the job conditionally offered, because of conditions known to each applicant's surgeons and treating or evaluating physicians that BNSF regarded as limiting the ability of each applicant to perform the essential job duties of the job conditionally offered, based solely or primarily upon an occupational medicine evaluation of the statistical risks involved.

4. The department enjoins and requires BNSF, within 60 days after this decision becomes final, to submit to the Human Rights Bureau proposed policies to

comply with the permanent injunction, including the means of publishing the policies to present and future employees and applicants for employment, and to adopt and implement those policies, with any changes mandated by the Bureau, immediately upon Bureau approval of them. The policies adopted must also provide that if BNSF decides to reject an applicant following the occupational medicine document review, based upon the occupational medicine conclusion that a further healing period after recovery from back surgery is necessary to confirm the contrary opinions of the treating or prior evaluating physicians, then BNSF must document the objective bases for the rejection, share them with the applicant in writing and allow the applicant a reasonable time to submit additional contrary medical information, which BNSF must then weigh and consider BEFORE finalizing the rejection by withdrawing the conditional offer of employment. If BNSF follows this procedure and still rejects the applicant, it must retain, for possible administrative review, all of the results of the rejected applicant's individualized assessment and all additional contrary medical information submitted. It must also document in writing to the rejected applicant all factors considered in its final decision.

DATED: January 13, 2006.

/s/ TERRY SPEAR

Terry Spear, Hearing Examiner  
Hearings Bureau, Montana Department of Labor and Industry

Louis Mele FAD



**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Louis Mele

**DEFENDANTS**

BNSF Railway Company

(b) County of Residence of First Listed Plaintiff Valley County, Montana  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Tarrant County, Texas  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brian Bramlett, Meloy & Triewiler, P.O. Box 1241, Helena, MT 59624  
(406) 442-8670

Attorneys (If Known)

Michelle Friend, Hedger Moyers LLP, 1555 Campus Way, Ste 201  
Billings, MT 59102 (406) 896-4100

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332

Brief description of cause:

Diversity Jurisdiction, Removal of State Court Case to Federal Court

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Petition for Judicial Review

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Additional Petition on same case remove DOCKET NUMBER

DATE

8/4/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_